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CAREY, RODRIGUEZ, GREENBERG & PAUL LLP
ATTN: STEVEN M. GREENBERG, ESQ.
950 PENINSULA CORPORATE CIRCLE
SUITE 3020
BOCA RATON, FL 33487

COPY MAILED

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OFFICE OF PETITIONS

In re Application of :
BROWN et al. :
Application No. 10/730,181 : **DECISION ON PETITION**
Filed: December 8, 2003 :
Attorney Docket No. 1010-002U :

This is a decision on the petition under 37 CFR 1.137(b), filed January 26, 2007 and supplemented on February 1, 2007, to revive the above-identified application.

The petition is **DISMISSED as moot**.

THIS DECISION PLACES ALL PARTIES REGISTERED BEFORE THE PATENT AND TRADEMARK OFFICE WHO HAVE ATTEMPTED TO FILE CORRESPONDENCE IN THE ABOVE-IDENTIFIED APPLICATION ON NOTICE THAT ANY FURTHER UNWARRANTED OR UNILATERAL ACTIONS THAT MISSTATE FACTS OR IMPROPERLY SEEK TO EITHER CHANGE THE CORRESPONDENCE ADDRESS OF RECORD OR REVOKE/APPOINT A POWER OF ATTORNEY MAY BE FORWARDED TO THE OFFICE OF ENROLLMENT AND DISCIPLINE FOR APPROPRIATE ACTION.

A proper revocation of power of attorney and new power of attorney was filed on September 26, 2006 in the above-identified application, and a Notice of Acceptance of Power of Attorney was mailed on October 18, 2006. A Notice of Allowance and Fee(s) Due was mailed to the former correspondence address of record on October 17, 2006. As MPEP 402.05 states, a revocation of the power of attorney becomes effective on the date that the revocation is received in the Office and not on the date of acceptance. The October 17, 2006 Notice of Allowance was, therefore, mailed to the incorrect address of record. A Corrected Notice of Allowance was mailed January 9, 2007 to the proper address of record and provides applicants with a non-extendible three-month period for response. The period for response to the January 9, 2007 Notice continues to run.

With regards to the numerous powers of attorney submitted in the above-identified application, 37 CFR 1.36(a) states in relevant part:

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by an applicant for patent (§ 1.41(b)) or an assignee of the entire interest of the applicant, or the owner of the entire interest of a patent. A power of attorney to the patent practitioners associated with a Customer Number will be treated as a request to revoke any powers of attorney previously given. Fewer than all of the applicants (or fewer than all of the assignees of the entire interest of the applicant or, in a reexamination proceeding, fewer than all the owners of the entire interest of a patent) may revoke the power of attorney only upon a showing of sufficient cause, and payment of the petition fee set forth in § 1.17(f).

The power of attorney filed March 10, 2006 is not acceptable because MPEP 402.02 states effective June 25, 2004 the associate power of attorney practice has been eliminated. The power of attorney filed October 20, 2006 and supplemented on November 17, 2006 was improperly accepted because this power of attorney was not signed by the applicant for patent or an assignee of the entire interest of the applicant. John Toscano (Toscano) is only a partial assignee of interest of the applicant. The Notice of Acceptance of Power of Attorney mailed November 8, 2006 is hereby vacated with this decision. Similarly, the power of attorney filed February 1, 2006 is not accepted because the revocation of power of attorney and new power of attorney is signed only by partial assignee Toscano. The power of attorney filed November 14, 2006 is not acceptable because it is not in compliance with 37 CFR 1.32. Only one of the inventors (Troy Brown) signed the power of attorney. As a result, the power of attorney and correspondence address of record remain with the practitioners and address associated with Customer Number 29973, as indicated in a properly executed power of attorney submitted on September 26, 2006.

Please note that 37 CFR 1.36(a) does permit fewer than all of the applicants or fewer than all of the assignees of the entire interest of the applicant to revoke the power of attorney with a showing of sufficient cause and payment of the petition fee set forth in 37 CFR 1.17(f). Alternatively, petitioner may file a petition under 37 CFR 1.183 and fee under 37 CFR 1.17(f) for consideration. The acceptance of such papers will result in more than one practitioner prosecuting the application at the same time. In this situation, however, each party must sign all subsequent replies submitted to the Office. See MPEP 402.10 for more guidance. The Office, however, will not engage in dual correspondence.

Petitioner will be refunded the petition fee of \$750 and the issue fee of \$700 to the authorized deposit account in due course.

Any questions concerning this matter may be directed to the undersigned at (571) 272-4787.



Denise Pothier
Petitions Examiner
Office of Petitions

conferee: Brian Hearn



cc: LERNER GREENBERG STEMER LLP
P. O. BOX 2480
HOLLYWOOD, FL 33022-2480

cc: LOTT & FREIDLAND, PA
P.O. BOX 141098
CORAL GABLES, FL 33114-1098